IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.97 OF 2006
IN
EXECUTION APPLICATION NO.41 OF 2006
IN
SUMMARY SUIT NO.1094 OF 2005

Jayesh Jayantilal & Co. ...Plaintiffs
Vs.
Khushal Hansraj Gala ...Defendant
And
Jigar Khushal Gala & Anr. ...Respondents

Mr.P.N.Gunwani i/b.Sanat Kumar N. Shah for Plaintiffs
Mr.P.V.Bhagat i/b.M/s.Vasant & Co. for Defendant
Mr.P.J.Pandit for Respondents 1 & 2

CORAM: SMT. ROSHAN DALVI, J.
DATED: 10TH JANUARY, 2007

P.C.

1. This Chamber Summons is for execution of the decree in the above Suit by appointment of a Court Receiver. The Plaintiff requires the Court Receiver to sell the flat of the Defendant being Flat No.12, Kailash Cottage Co-op. Hsng. Society, Opposite Sion Railway Station, Mumbai-400 022 (the flat). The Respondents are the son and the wife of the Defendant.

2. The Respondents claim to own 50% share each in the flat of the Defendant. The claim of the first Respondent is under a Gift Deed executed on 4th April, 2005, a day before this Suit came to be filed on 5th April, 2005. The parties had entered into certain transactions evidenced by Invoices Exhibits C to K to the Plaint. The Defendant is therefore, imputed knowledge of the impending suit. The Defendant has sought to dispose of 50% of his share in the flat in which

he continues to reside to his son on the premise that he was required to own an immovable property to secure admission to a foreign University for higher studies. No such requirement by any institution is shown. Consequently, the Plaintiff has shown that the Gift Deed is executed malafide and to defeat and delay the Plaintiff's claim.

3. The second Respondent who is the wife of the Defendant claims 50% share in the suit flat. This is on the document of purchase in which she is shown as a joint owner. She has produced her income-tax returns showing the 1/2 share in the flat so purchased in the names of the Defendant and herself. The income-tax returns produced are from the year after the purchase of the flat. The income-tax returns show an income from one truck and interest of Rs.17000/- in her returns. The income of the Respondent No.2 in the years preceding the purchase of the flats is not shown because no such tax returns are produced. The Respondent No.2 has not satisfactorily shown how she came to purchase her 50% share. The document showing the name of the Defendant along with Respondent No.2, is therefore, made merely for convenience. The separate legal interest of Respondent No.2 in the flat sought to be attached and sold is not seen.

4. In fact the case of both the Applicants totally lacks bonafides. The legal right and interest of the Defendant in the said flat is seem.

5. The suit is filed as Summary Suit for recovery of the amounts under the transactions between the parties. The Summons for Judgment taken out by the Plaintiffs was made absolute upon which the Decree has been passed.

6. Under the provisions of Order 21 Rule 30 of the CPC such decree can be best executed by attachment and sale of the movable and immovable properties of the Defendant. The Plaintiffs have already taken out the Execution Application on 24th January, 2006. That application is essentially required to be pursued. The Plaintiffs have moved an application for the amendment of the Chamber Summons, such as to execute the decree by attachment and sale instead of by sale by the Court Receiver.

7. In these aforesaid circumstances amendments need to be allowed in the Chamber Summons. Copies of the Draft Amendments are served upon the Advocates for the Defendants as well as Respondents.

8. In any event, other reliefs in the Chamber Summons can be moulded upon a case for such reliefs being made out. Both have been extensively heard on the affidavits filed on the facts of the case.

8. Hence the following order is passed:

O R D E R

1. The Plaintiffs shall be entitled to execute the decree obtained in the above suit under the Warrant of Attachment dated 24th January, 2006 by attachment and sale of flat No.12 Kailash Cottage Co-op.Housing Society Ltd., Opp: Sion Railway Station, Mumbai-400 022 of the Defendant, now shown in the name of his son, Respondent No.1, and his wife Respondent No.2 in the Society Records.

2. The Respondents shall not dispose or create any 3rd party rights in the the above flat for a period of 8 weeks from today.

3. The Chamber Summons disposed of accordingly.

4. This order is stayed for 4 weeks.

(SMT. ROSHAN DALVI, J.)